APPEAL NO. 020941
FILED JUNE 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on March 25, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that she did not have disability; and that the respondent (self-insured) did not waive its right to contest the compensability of the claimed injury under Section 409.021. The claimant appeals those determinations, asserting factual and legal error. In its response, the self-insured urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and did not have disability. The hearing officer's injury determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer could believe the self-insured's evidence, as he did, over that of the claimant. Nothing in our review of the record reveals that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

The hearing officer did not err in determining that the self-insured did not waive its right to contest compensability of the claimed injury, in this instance. In Continental Cas. Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." We have previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 982446, decided December 2, 1998 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982161, decided October 26, 1998. The claimant asserts that the hearing officer erred in his application of Williamson, arguing that the hearing officer implicitly accepted that the claimant sustained the claimed injuries although they were not work related. We disagree. In Finding of Fact No. 4, the hearing

officer found that the "Claimant fabricated her alleged injury." Thus, the hearing officer is clear that the claimant sustained no injury either work related or nonwork related. His determination in that regard is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Accordingly, under the facts of this case, the hearing officer did not err in his application of Williamson. Nevertheless, we further note that the evidence of record demonstrates that the Employer's First Report of Injury or Illness (TWCC-1) was completed on October 12, 2001. The self-insured's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) and an affidavit from the adjuster handling this case state that the self-insured received its first written notice of the claimed injury on October 16, 2001, four days after the TWCC-1 was completed. The TWCC-21 contesting compensability is dated November 19, 2001, and the adjuster's affidavit states that she filed the TWCC-21 on that day. As such, it appears that the self-insured's contest of compensability was made within 60 days of the date it received written notice of the alleged injury.

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Elaine M. Chaney
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge